

Document: Final Rule

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TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #00-125(F)

DIGEST

Adds 312 IAC 3-1-19 concerning modifications of final agency orders and 312 IAC 3-1-20 concerning proceedings remanded from judicial review or on appeal to the procedural rules governing adjudicatory proceedings before the Natural Resources Commission and its Division of Hearings. Effective 30 days after filing with the secretary of state.

312 IAC 3-1-19

312 IAC 3-1-20

SECTION 1. 312 IAC 3-1-19 IS ADDED TO READ AS FOLLOWS:

312 IAC 3-1-19 Modification of final agency order

Authority: IC 14-10-2-4; IC 4-21.5-3-31

Affected: IC 4-21.5-3-29; IC 14

Sec. 19. (a) A person who wishes to seek modification of a final agency action entered under this rule must file a petition with the administrative law judge and serve a copy upon each party.

(b) Except as provided in subsection (d), the administrative law judge may modify a final agency action only where the petitioner demonstrates each of the following:

(1) The petitioner is not in default under IC 4-21.5-3.

(2) Newly discovered material evidence exists.

(3) The evidence could not, by due diligence, have been discovered and produced at the hearing in the proceeding.

(c) The administrative law judge shall limit any hearing granted under subsection (b) to the issues directly affected by the newly discovered evidence. If an administrative law judge who is not the ultimate authority conducts the rehearing, IC 4-21.5-3-29 and section 12 of this rule apply to the review of the order resulting from the rehearing.

(d) The administrative law judge may, or shall upon the agreement of all parties, modify a final agency action to correct a clerical mistake or other error resulting from oversight or omission. *(Natural Resources Commission; 312 IAC 3-1-19; filed Jan 23, 2001, 9:50 a.m.: 24 IR 1613)*

SECTION 2. 312 IAC 3-1-20 IS ADDED TO READ AS FOLLOWS:

312 IAC 3-1-20 Remand following judicial review or appeal

Authority: IC 14-10-2-4; IC 4-21.5-3-31

Affected: IC 4-21.5; IC 14

Sec. 20. (a) Except as provided in subsection (b), upon remand following judicial review or appeal, the administrative law judge who previously conducted the proceeding shall resume jurisdiction.

(b) If the administrative law judge who previously conducted the proceeding is unavailable or declines to resume jurisdiction, the division director shall appoint a substitute administrative law judge as soon as practicable.

(c) If the administrative law judge is not the ultimate authority, IC 4-21.5-3-29 and section 12 of this rule apply. *(Natural Resources Commission; 312 IAC 3-1-20; filed Jan 23, 2001, 9:50 a.m.: 24 IR 1613)*

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Notice of Intent Published: 23 IR 2520

Proposed Rule Published: September 1, 2000; 23 IR 3147

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Approved by Attorney General: January 5, 2001

Approved by Governor: January 19, 2001

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Incorporated Documents Filed with Secretary of State: None